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SEP 17 2001

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

BY \_\_\_\_\_ DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COMPUTERS BY US, INC. also d/b/a FENCEWAY  
COMPUTERS and TWEAKABLE COMPUTERS,

JEFFREY M. WESKO, individually and as an officer of  
COMPUTERS BY US, INC. and d/b/a FENCEWAY  
COMPUTERS and TWEAKABLE COMPUTERS,

WANDA M. WESKO, Individually and as an officer of  
COMPUTERS BY US, INC. and d/b/a FENCEWAY  
COMPUTERS and TWEAKABLE COMPUTERS.

RICHARD A. WESKO, Jr., individually and as an owner of  
COMPUTERS BY US, INC. and d/b/a FENCEWAY  
COMPUTERS,

Defendants.

Civil Action No. L-00- 3232

FINAL ORDER  
FOR INJUNCTION  
AND  
EQUITABLE RELIEF

On October 30, 2000, plaintiff, United States of America, filed its Complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging the defendants Jeffrey M. Wesko, Wanda M. Wesko, Richard A. Wesko, Jr., and Computers by Us, Inc. d/b/a Fenceway Computers and Tweekable Computers, with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC Trade Regulation Rule, entitled the "Mail or Telephone Order Merchandise Rule," 16 C.F.R. Part 435. Plaintiff served a summons and copy of the complaint on the corporate defendant, through Wanda Wesko, a

corporate officer, on November 11, 2000. The corporate defendant did not answer the complaint.

On March 16, 2001, plaintiff moved for entry of default against the corporate defendant. The Clerk of Court entered default against the corporate defendant, which is not represented by counsel, on March 16, 2001.

Plaintiff has been in contact with Jeffrey Wesko, also a defendant in this action and president of the corporate defendant. He advised plaintiff that the corporation did not have the funds to retain counsel to represent the corporation in these proceedings.

The plaintiff has moved for a default judgment against the corporate defendant, pursuant to Fed. R. Civ. P. 55, and has provided notice of that motion all defendants. Based on the facts and applicable law, the Court finds it appropriate to enter a default judgment against the corporate defendant. Now, therefore, the Court makes the following findings and orders the following injunctive and other equitable relief ("Final Order").

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and over the parties to this action;
2. Venue in the United States District Court for the District of Maryland is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);
3. The activities of all defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44;
4. The complaint states a claim upon which relief may be granted against the corporate defendant under Sections 5(a)(1), 9, 13(b), 16(a) and 19 of the FTC Act. 15

U.S.C. §§ 45(a)(1), 49, 53(b), 56(a) and 57b, and the Commission's Trade Regulation Rule, the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435; and

4. Entry of this Final Order is in the public interest.

#### **DEFINITIONS**

For the purposes of this Final Order, the following definitions shall apply:

1. "Defendant" means Computers by Us, Inc., Fenceway Computers, and Tweekable Computers.
2. "Individual Defendants" means any or all of Jeffrey M. Wesko, Wanda M. Wesko, or Richard A. Wesko, Jr.
3. "Internet" means a worldwide system of linked computer networks that use a common protocol (e.g., transmission control protocol/internet protocol ("TCP/IP")) to deliver and receive information. It includes but is not limited to the following forms of electronic communication: electronic mail ("email") and email mailing lists, the World Wide Web, newsgroups, Internet Relay Chat, instant messaging, and file transfers protocols thereon, and remote computer access from anywhere in the world thereto.
4. "Mail Order Rule" or "Rule" means the Federal Trade Commission's Trade Regulation Rule, the "Mail or Telephone Order Merchandise Rule," codified at 16 C.F.R. Part 435.
5. "Agent" means any representative, employee, dealer, or independent contractor who offers goods or services for or on behalf of Defendant or any of the Individual Defendants or who makes sales presentations or offers on behalf of Defendant or its successors, assigns, or any person in active concert or participation with Defendant, now or in the future.

6. "FTC" or "Commission" means the Federal Trade Commission

I.

**IT IS THEREFORE ORDERED** that the Defendant, its successors and assigns, whether acting directly or indirectly through any persons or entities under any of the defendants' control, is hereby permanently restrained from advertising, marketing or offering for sale goods or services via the Internet, or from assisting or facilitating any other person or entity from advertising, marketing or offering for sale goods or services using the Internet, *unless* Defendant, prior to engaging in such activities obtains a performance bond in the principal sum of **TWO HUNDRED THOUSAND DOLLARS (\$200,000)** prior to engaging in such activities. The terms and conditions of the bond requirement are as follows:

- A. The bond shall be conditioned upon demonstrated compliance with all of the provisions of this Order by Defendant and its successors, assigns, or any person acting in concert or participation with Defendant. The bond shall be deemed continuous and remain in full force and effect as long as Defendant and its successors, assigns, or any person acting in concert or participation with Defendant engages in or assists others engaging in the advertising, marketing, or offering goods or services via the Internet. Defendant and its successors, assigns, or any person acting in concert or participation with Defendant, shall maintain the bond for a period of five (5) years after having ceased such activities, and after having provided notice to the Plaintiff and the FTC that Defendant or its successors, assigns, or any person acting in concert or participation with Defendant has ceased, engaging in or assisting others

engaged in the advertising, marketing, or offering goods or services via the Internet. The bond shall cite this Final Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial performance due, in whole or in part, to any violation of the Rule or Section 5(a) of the FTC Act related to this Final Order, or any provision of this Order, or any other violation of law;

- B. The bond required pursuant to this subparagraph shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which Defendant, and its successors, assigns, or any person acting in concert or participation with Defendant, or any entity directly or indirectly under Defendant's control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring. The bond shall be in favor of both: (1) the United States for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;
- C. The bond required pursuant to this subparagraph is in addition to, and not in lieu of, any other bonds required by federal, state, or local law;
- D. At least ten (10) days before commencing any activity that requires obtaining a bond, Defendant and its successors, assigns, or any person acting in concert or participation with Defendant, shall provide notice to the Plaintiff and to the FTC describing in reasonable detail said activities, and include in such notice a copy of the bond obtained; and

E. Defendant and its successors, assigns, or any person acting in concert or participation with Defendant, shall not disclose the existence of the bond to any consumer without simultaneously and conspicuously making the following disclosure in the same medium: "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT AS PART OF A FINAL ORDER AGAINST [name(s) of such defendant(s)] in United States v. Computers by Us, Inc., et al., Civ. Action No. L-00-3232, U.S. District Court for the District of Maryland (Northern Division)."

II.

IT IS FURTHER ORDERED that Defendant, its successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with Defendant who receive actual notice of this Final Order by personal service or otherwise, is hereby prohibited from misrepresenting in any manner, expressly or by implication, any fact that is material to any consumer's decision to purchase any goods or services, including but not limited to:

- A. Representing in any manner, expressly or by implication, that any defendant or any agent of Defendant or any of the Individual Defendants is in possession of goods or able to perform services being offered for sale, if such goods are not in the possession of Defendant or any of the Individual Defendants or any agent of Defendant or any of the Individual Defendants or their agents are unable to perform such services; or
- B. Representing in any manner, expressly or by implication, that delivery of goods or services offered for sale by Defendant or any of the Individual Defendants will

be made upon receipt of payment by Defendants or any of the Individual Defendants, or any agent of Defendant or any of the Individual Defendants, if such representation is untrue.

III.

**IT IS FURTHER ORDERED** that the defendants, their successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provisions of the Rule, 16 C.F.R. Part 435, or from assisting or facilitating any other individual or entity from violating any provisions of the Rule, including but not limited to:

- A. Soliciting mail or telephone sales when defendants do not have a reasonable basis to expect that they will be able to ship the ordered merchandise either: (1) within the time stated by the defendants, or (2) if no time is stated, within thirty days after receipt of a properly completed order;
- B. Failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to any necessary delay in shipping or to cancel the order and receive a prompt refund; or
- C. Failing to make a prompt refund if the buyer does not consent to a delay in shipping pursuant to subparagraph B of this Paragraph, or if shipment does not take place.

In the event that the Rule is hereafter amended or modified, Defendant's compliance with the Rule as so amended or modified shall not be deemed a violation of this Final Order. A copy of this Rule is attached hereto as Appendix A and incorporated herein as if fully set forth verbatim.

IV.

IT IS FURTHER ORDERED that Defendant, its successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, social security number, email address, or other identifying information of any person who purchased or offered to purchase from Defendant or any of the Individual Defendants, directly or through an Internet auction, any good or service at any time prior to entry of this Final Order; *provided*, however, that the defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

V.

IT IS FURTHER ORDERED that entry of this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and financial information provided by Defendant to the Department of Justice and to the FTC; specifically including DOJ OBD-500C, dated \_\_\_\_\_, 2001. If upon motion by the Plaintiff, the Court finds that Defendant failed to disclose any material asset the



value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial information, the Court, without further adjudication, shall order Defendant to:

(1) pay to the Plaintiff consumer redress in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000), less any verified payments for consumer redress made by any of the defendants in this action, and the amount shall become immediately due and payable; and (2) provide, within ten (10) days of the date of service of the order, counsel for the Plaintiff and the FTC with a completed financial disclosure statement, attached hereto as Appendix B, and copies of Defendant's federal and state tax returns for the two (2) years preceding the date of the Court's order. In the event that upon motion by the Plaintiff, the Court modifies this Final Order pursuant to this Paragraph, the Plaintiff may apply any or all funds received from any of the defendants pursuant to this Final Order, and any interest received thereon, to a consumer redress program to be administered by the FTC, and to related administrative expenses; *provided, however*, that if the Plaintiff determines a consumer redress program is not feasible, the Plaintiff may pay such funds to the United States Treasury as disgorgement. The Plaintiff shall have full and sole discretion to: (1) determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Final Order; (2) determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and (3) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Final Order. Should this

Final Order be modified pursuant to this Paragraph, this Final Order, in all other respects, shall remain in full force and effect unless otherwise ordered by this Court. Any proceedings instituted under this Paragraph shall be in addition to, and not in lieu of, any other civil or criminal remedies available by law. Solely for the purposes of reopening or enforcing this Paragraph, any of the allegations set forth in the complaint filed in this matter are deemed admitted.

**VI.**

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Final Order,

- A. Defendant shall notify the FTC in writing at least thirty (30) days prior to any proposed change in the corporation, including, but not limited the use of a new business name, the creation, incorporation, dissolution, assignment sale or merger of any such business entity, a sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the proposed filing of a bankruptcy petition, a change in the corporate name or address, or any other change in the form or activities of the corporate defendant which may affect any compliance obligation arising out of this Final Order; *provided*, however, that with respect to any proposed change in a corporation about which the defendant learns fewer than thirty (30) days prior to the date such action is to take place, the defendant shall notify the FTC as soon as practicable after learning of such proposed change.
- B. One hundred eighty (180) days after the date of entry of this Final Order, the defendant shall provide a written report to the FTC, sworn under penalty of

perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Final Order. This report shall include, but not be limited to:

1. The defendant's then-current business address and telephone number;
  2. A description of the defendant's business activities;
  3. A copy of each acknowledgment of receipt of this Final Order obtained by the defendant pursuant to Paragraph X below; and
  4. A statement describing the manner in which the defendant has complied and is complying with this Final Order.
- C. Upon written request by a representative of the Plaintiff or the FTC, the defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order;
- D. The notices and reports required by this Paragraph shall be sent to the:

Associate Director  
Division of Marketing Practices  
Federal Trade Commission  
Room H238  
6th Street & Pennsylvania Ave, NW  
Washington, DC 20580

VII.

IT IS FURTHER ORDERED that the Plaintiff and the FTC are authorized to monitor Defendant's compliance with this Final Order by all lawful means, including but not limited to the following means:

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- A. The Plaintiff and the FTC are authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Final Order, and copy of such process shall be provided to Defendant, unless Defendant has advised the Plaintiff and the FTC in writing that such notice shall be transmitted to a designated attorney or attorneys whose name(s) and address(es) have been provided to the Plaintiff and the FTC;
- B. Defendants agree that the Plaintiff and the FTC are authorized to use representatives posing as consumers and suppliers to Defendant, its employees, or any other entity managed or controlled in whole or in part by Defendant or any of the Individual Defendants, without the necessity of identification or prior notice to any of the defendants or to a designated attorney; and
- C. Nothing in this Final Order shall limit the Plaintiff's or the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendant or any of its successors or assigns has violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.
- D. For the purposes of this Order, the plaintiff and the FTC are authorized to communicate directly with the corporate defendant and its officers and employees.

VIII.

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of determining compliance with this Final Order, Defendant shall permit representatives of the Plaintiff or the FTC, within three (3) business days of receipt of written notice from the Plaintiff or the FTC:

A. Access during normal business hours to any office, or facility storing documents, of any business of Defendant engaged in the sale or offering for sale of goods or services. In providing such access, Defendant shall permit representatives of the Plaintiff or the FTC to inspect and copy all documents relevant to any matter contained in this Final Order, and shall permit Plaintiff or FTC representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied, or shall promptly make legible copies, at Defendant's expense; and

B. To interview Defendant's officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subparagraph A of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

*Provided* that, upon application of the Plaintiff or the FTC and for good cause shown, the Court may enter an *ex parte* order granting immediate access to any of the

defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

**IX.**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Final Order, Defendant, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with Defendant who receives actual notice of this Final Order by personal service or otherwise, in connection with any business engaged in the sale of goods or services via the Internet, or assists others engaged in the sale of goods or services via the Internet, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Records containing the names, addresses, telephone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced

or shipped any goods or services, or from whom such business accepted money or other items of value:

- D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:
1. the consumer's name, address, telephone number and the dollar amount paid by the consumer;
  2. the written complaint or refund request, if any, and the date of the complaint or refund request;
  3. the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
  4. each response and the date of the response;
  5. any final resolution and the date of the resolution; and
  6. in the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

**X.**

**IT IS FURTHER ORDERED** that Defendant shall:

- A. For a period of five (5) years from the date of entry of this Final Order, provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a

management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees or retaining any such persons, for any business where: (1) any of the Individual Defendants in the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business is engaged in the sale of goods or services, or assisting others engaged in the sale of goods or services; and

- B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Plaintiff or the FTC, the original signed and dated acknowledgments of the receipt of copies of this Final Order, as required in Subparagraph A of this Paragraph.

XI.


IT IS FURTHER ORDERED that copies of this Final Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents of the defendants, or that may be subject to any provision of this Final Order. Pursuant to Fed. R. Civ. P. 4 (c)(2), this Final Order may be served by agents of the Plaintiff, and by agents of any process service retained by the Plaintiff.



XII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes. *The Clerk SHALL CLOSE THE CASE*

SO ORDERED, this 15<sup>TH</sup> day of September, 2001 at Baltimore, Maryland.

  
Benson Everett Legg  
United States District Judge